



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LOCAL #1571 OF THE INTERNATIONAL ASSOCIATION:
OF FIRE FIGHTERS, CLAREMONT, N. H.

Complainant

and

CLAREMONT CITY COUNCIL,
CLAREMONT, NEW HAMPSHIRE

Respondent

CASE NO. F-0107:3

DECISION NO. 81-25

APPEARANCES

Representing Local #1571 IAFF:

Victor G. Bergeron, Firefighter
Richard Bergeron, Firefighter

Representing the City of Claremont:

Louie Elliott, Esq., Counsel
Edward Brookshier, City Manager

BACKGROUND

Local #1571 of the International Association of Fire Fighters (IAFF) of Claremont filed improper practice charges against the City of Claremont (CITY) for withholding of wages, stating as follows:

"The City of Claremont held in abeyance the base wage increases granted January 1, 1981 to members of Local #1571 by contractual agreement".

The three year agreement signed by the parties on January 25, 1979 contained certain provisions for annual increases payable on the 1st of January of each year. The increases were paid as contractually agreed on January 1, 1979, January 1, 1980 and on January 1, 1981. On February 2, 1981, however, the officers of Local #1571 were called to a meeting with the City Manager who advised them that because of an opinion from the City Solicitor, the salaries would be rolled back to the 1980 level.

Several meetings between the parties were held in an effort to resolve the issue prior to a City Council meeting but on February 6, 1981, IAFF received the following from the City Manager which stated:

"Pursuant to the attached opinion from the City Solicitor, and in accordance with our discussions this morning, please be advised that base wage rate increases will be held in abeyance effective with the issuance of all paychecks on February 6, 1981, until such time as a salary ordinance establishing 1981 contract rates is in place.

Your understanding in this matter will be most appreciated. Should you have any questions, please call me at any time."

IAFF requested relief in a letter dated February 8, 1981 in their request to PELRB as follows:

1. That all expenses incurred by Local #1571 in the processing and filing of this unfair labor practice be paid for by the City of Claremont.
2. That the City of Claremont be ordered to pay each member of Local #1571 the highest current rate of interest on a savings account among the four banks located in the City of Claremont on all money held in abeyance.
3. That the Mayor or City Manager be ordered to read the Board's ruling in public session at the next scheduled Claremont City Council meeting upon receiving the Board's ruling.

Hearing on the matter was held in Concord on April 23, 1981 at which time the City answered the charges by admitting that increases had been withheld because under the provision of the City Charter, the City Manager had no authority to pay any compensation in excess of the amounts authorized by the existing salary ordinance. The City further stated that it had illegally paid wage increases prior to the passage of a salary ordinance for the years 1979 and 1980.

IAFF's position was simply that they had a valid contract calling for an annual wage increase and the increases had been paid, as agreed, in 1979 and 1980 but that the 1981 increase had been suspended in February of 1981 and rolled back to the 1980 level.

It appeared that historically the City had paid contractual wage increases prior to the adoption of a salary ordinance and the action had been ratified by the City Council. Because of questions raised by the City Council, the City Manager sought an opinion from the City Solicitor on the matter. His opinion stated, in part, "Your dilemma arises from the fact that these increases are legal obligations of the City, which must be paid; but, Section 54 of the Charter prohibits payments which do not comply with the salary ordinance....." and goes on to discuss the provision of RSA 273-A where it cites that it is a "prohibited practice for any public employer to breach a collective bargaining agreement". The City Solicitor recommended that the City Council amend its salary ordinance to preclude this type of conflict in the future.

The City Manager testified that because of the City Charter requirement and the Solicitor's opinion, he felt had to roll back wages to the 1980 level but would take steps to try to resolve the dilemma by attempting to amend the salary ordinance. He added that he was of the opinion that the salary ordinance would be passed and the increases paid as authorized.

FINDINGS

-- There exists a legally negotiated contract by and between the City of Claremont and Local #1571, IAFF of Claremont.

-- The three-year contract contains certain provisions for wage increases effective on January 1 of each year.

-- A conflict exists in the language of the City Charter in its relation to payment of wages and salaries and the requirements and validity of the negotiated collective bargaining agreement.

-- Both parties at hearing appeared desirous of abiding by the contract but were prevented from so doing because of technicalities.

-- The parties agreed to work toward a resolution of the dilemma.

-- The wage increases had been paid in prior years irregardless of the City Charter requirement.

-- IAFF Local #1571 agreed to drop its remedy requests for interest and for the reading of the Board's ruling at a public session of the City Council.

DECISION AND ORDER

After careful review of the evidence and testimony presented at hearing, the Board rules as follows:

- A. The City of Claremont has committed an unfair labor practice in violation of RSA 273-A:5, I(h) by failing to pay the negotiated wage as agreed to in the existing agreement.
- B. The City is ordered to pay wages in accordance with Article VII of the existing agreement.
- C. The City is ordered to reimburse Local 1571 the sum of \$250.00 for expenses incurred in this matter.



EDWARD J. HASELTINE, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 6th day of August, 1981.

By unanimous vote, Chairman Haseltine presiding, members Hilliard and Osman present and voting. Also present, Executive Director LeBrun.